

<sup>1</sup>Pursuant to Business and Professions Code section 101.1(b), on July 1, 2008, the director became vested with the duties, powers, purposes, responsibilities, and jurisdiction of the Board of Vocational Nursing and Psychiatric Technicians.

BEFORE THE  
DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
STATE OF CALIFORNIA

In the Matter of the Petition for  
Reinstatement of:

DENNIS RAY POOL

OAH No. L2008090043

Vocational Nurse License  
No. VN 166775,

Petitioner.

**PROPOSED DECISION**

This matter was heard by David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, on September 11, 2008, in Los Angeles, California.

Nicholas Sanchez, Deputy Attorney General, represented the Department of Justice.

Petitioner Dennis Ray Pool was present and represented himself.

Evidence was received and the matter was submitted on September 11, 2008. The Administrative Law Judge makes the following factual findings and legal conclusions.

**FACTUAL FINDINGS**

1. On February 17, 1994, the Board of Vocational Nursing and Psychiatric Technicians (Board)<sup>1</sup> issued vocational nurse license number VN 166775 to Dennis Ray Pool (Petitioner). The license expired on March 31, 2000.

2. On February 11, 2000, in Case No. 6143, OAH No. L1999090385, after an administrative hearing, the Board issued a decision revoking Petitioner's license. The decision was based upon Petitioner's two criminal convictions; on June 17, 1997, on his plea of nolo contendere, of violating Penal Code section 594, subdivision (a), vandalism, a misdemeanor; and on January 2, 1998, on his plea of guilty, of violating Vehicle Code

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<sup>1</sup> As of July 1, 2008, the Board became a Bureau within the Department of Consumer Affairs.

section 2800.2, subdivision (a), evading an officer with a willful disregard for the safety of others, a felony.

3. The current petition for reinstatement of license was received by the Bureau on July 10, 2008. Attached to the petition, and discussed in more detail below, are: statements of additional information relating to sections of the petition; and letters of recommendation. Petitioner submitted an additional letter of recommendation at the hearing. Although Petitioner wrote in his petition that a certificate of discharge from criminal probation was attached, there is no such attachment to the petition. Nevertheless, Petitioner's statement that he was discharged from parole on December 10, 1999, is not refuted by any other evidence.

4. In his testimony and petition, Petitioner takes full responsibility for the actions that resulted in his convictions. He has complied with the terms of probation, including payment of fines and restitution. Petitioner attributes his criminal conduct to a combination of immaturity, emotional upset at the end of a long term relationship, and association with the wrong people. Petitioner has successfully addressed these issues. He presently emphasizes a healthy lifestyle, including exercise and diet, and assists his family and friends with their health and lifestyle issues. Petitioner has developed a strong support system on whom he can rely in times of stress.

5. Petitioner reads books on nursing related subjects, including those related to the examinations for specialization certification. He most recently has been employed at Wal-Mart from June 2008 to the present.

6. Petitioner submitted a reference letter, and testimony, of Justin Jolly, a close friend of 15 years. According to Mr. Jolly, the Petitioner is caring and diligent, and the criminal acts were very out of character. Petitioner exhibited embarrassment and remorse to Mr. Jolly about his criminal acts.

7. Petitioner submitted a reference letter from Surjit Boparai, president and CEO of a nurses' registry with which he was employed from May 1995 to March 2000. Mr. Boparai wrote that Petitioner's work and conduct as a nurse were excellent, and that Petitioner was a reliable, caring and competent nurse. Petitioner also submitted a reference letter from his assistant manager at Wal-Mart, which attests to his perfect attendance, excellent customer service, and willingness to increase his knowledge and responsibilities for the company.

8. Petitioner would like his vocational nursing license to be reinstated because he has always enjoyed being a nurse, because helping others gave him a sense of fulfillment that he would like to experience again, and because his skills, temperament and empathy would be a benefit to the healthcare system.

### LEGAL CONCLUSIONS

1. A person whose license has been revoked can apply for reinstatement under Business and Professions Code section 2878.7. Under subdivision (b), Petitioner has the

burden of establishing by clear and convincing evidence that he is entitled to the requested relief.

2. Petitioner clearly and convincingly established that cause exists to reinstate his license, pursuant to Business and Professions Code section 2878.7, and California Code of Regulations, title 16, section 2522.5, subdivision (b). Petitioner clearly and convincingly demonstrated that he is rehabilitated from the acts that resulted in revocation of his license. No evidence was presented of any misconduct subsequent to his discipline. More than ten years have elapsed since the last misconduct that led to the revocation of his license, and more than eight years since the revocation itself. Under these circumstances, public protection will not be jeopardized by reinstating Petitioner's license. (Factual Findings 1-8.)

3. However, the public will be fully protected only if such reinstatement is on a probationary basis. Both Government Code section 11522, and Business and Professions Code section 2878.7, subdivision (d), provide the authority to reinstate a previously revoked license upon appropriate "terms and conditions." A three-year probation is warranted, with terms and conditions including that he take and pass the licensing examination, as required under Business and Professions Code section 2892.4, because his license has not been renewed within four years of expiration. (Factual Findings 1-8.)

#### ORDER

The petition for reinstatement of license of Dennis Ray Pool (vocational nurse license number VN 166775) is hereby GRANTED, as follows:

Petitioner's license is reinstated; the reinstated license is immediately revoked; however, the revocation is stayed for a period of three (3) years on the following terms and conditions:

1. Take and pass licensure examination

As a condition for reinstatement of a license, Petitioner shall take and pass the licensure exam currently required of new applicants prior to resuming practice. Petitioner shall pay the established examination and licensing fees.

All standard terms or any other terms of probation shall be tolled until Petitioner has successfully passed the licensure examination and notice of licensure has been mailed to Petitioner by the Bureau. Petitioner's failure to pass the licensure examination within two (2) years shall be considered a violation of his probationary status.

2. Obey all laws

Petitioner shall obey all federal, state and local laws, including all statutes and regulations governing the license. Petitioner shall submit, in writing, a full and detailed account of any and all violations of the law to the Bureau within five (5) days of occurrence.

To ensure compliance with this term, Petitioner shall submit two (2) completed fingerprint cards and the applicable fingerprint processing fees to the Bureau within thirty (30) days of the effective date of the decision, unless the Bureau determines that fingerprint cards were already submitted by the Petitioner as part of the licensure application process effective July 1, 1996. Petitioner shall also submit a recent 2" x 2" photograph of himself within thirty (30) days of the effective date of the decision.

3. Compliance with probation program and quarterly report requirements

Petitioner shall fully comply with terms and conditions of the probation established by the Bureau and shall cooperate with the representatives of the Bureau in its monitoring and investigation of the Petitioner's compliance with the Probation Program.

Petitioner shall submit quarterly reports, under penalty of perjury, in a form required by the Bureau. The reports shall certify and document compliance with all the conditions of probation.

4. Notification of address and telephone number change(s)

Petitioner shall notify the Bureau, in writing, within five (5) days of a change of residence or mailing address, of his new address and any change in his work and/or home telephone numbers.

5. Notification of residency or practice outside of state

Petitioner shall notify the Bureau, in writing, within five (5) days, if he leaves California to reside or practice in another state. Petitioner shall notify the Bureau, in writing, within five (5) days, upon his return to California.

The period of probation shall not run during the time Petitioner is residing or practicing outside California.

6. Notification to employer(s)

When currently employed or applying for employment in any capacity in any health care profession, Petitioner shall notify his employer of the probationary status of Petitioner's license. This notification to Petitioner's current health care employer shall occur no later than the effective date of the Decision. Petitioner shall notify any prospective health care employer of his probationary status with the Bureau prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of this Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency

Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Petitioner shall cause each health care employer to submit quarterly reports to the Bureau. The reports shall be on a form provided by the Bureau, shall include a performance evaluation and such other information as may be required by the Bureau.

Petitioner shall notify the Bureau, in writing, within five (5) days of any change in employment status. Petitioner shall notify the Bureau, in writing, if he is terminated from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination.

7. Interviews/meetings with board representative(s)

During the period of probation, Petitioner shall appear in person at interviews/meetings as directed by the Bureau, or its designated representatives.

8. Employment requirements and limitations

During probation, Petitioner shall work in his licensed capacity with the Bureau in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

While on probation, Petitioner shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Bureau approved continuing education course except as approved, in writing, by the Bureau. Petitioner shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Bureau.

9. Supervision requirements

Petitioner shall obtain prior approval from the Bureau, before commencing any employment, regarding the level of supervision provided to the Petitioner while employed as a licensed vocational nurse or psychiatric technician.

Petitioner shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) during the period of probation, except as approved, in writing, by the Bureau.

10. Completion of educational course(s)

Petitioner, at his own expense, shall enroll and successfully complete a course(s) substantially related to the violation(s) that resulted in the license revocation no later than the



end of the first year of probation, or Petitioner shall be suspended from practice, until he has enrolled in and has successfully completed the specified coursework.

The coursework shall be in addition to that required for license renewal. The Bureau shall notify Petitioner of the course content and number of contact hours required. Within thirty (30) days of the Bureau's written notification of assigned coursework, Petitioner shall submit a written plan to comply with this requirement. The Bureau shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, Petitioner shall cause the instructor to furnish proof to the Bureau within thirty (30) days of course completion.

11. Maintenance of valid license


Petitioner shall, at all times while on probation, maintain an active current license with the Bureau, including any period during which suspension or probation is tolled.

Should Petitioner's license, by operation of law or otherwise, expire, upon renewal or reinstatement, Petitioner's license shall be subject to any and all terms of this probation not previously satisfied.

12. Violation of probation/Completion of probation

If Petitioner violates the conditions of his probation, the Bureau after giving Petitioner notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Petitioner's license. If, during the period of probation, an accusation or petition to revoke has been filed against Petitioner's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Petitioner's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Bureau. Upon successful completion of probation, Petitioner's license will be fully restored.

DATED: November 12, 2008.

  
DAVID B. ROSENMAN  
Administrative Law Judge  
Office of Administrative Hearings